

89-614⁽²⁾

Supreme Court, U.S.
FILED

SEP 29 1989

JOSEPH F. SPANIOL, JR.
CLERK

Nos. _____

**In The
SUPREME COURT OF THE UNITED STATES
October Term, 1989**

**LOCAL 112, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
AFL-CIO,**

Petitioner,

v.

VICTOR BRAY, ET AL,

Respondents.

**On Petition for Writ of Certiorari to the
Supreme Court of the
State of Washington**

BRIEF OF RESPONDENTS IN OPPOSITION

**Tim Weaver, Esq.
Patrick R. Cockrill, Esq.
Cockrill, Weaver & Bjur, P.S.
Attorneys for Respondents**

**316 North Third Street
P.O. Box 487
Yakima, WA 98907
(509) 575-1500**

11/2/89



TABLE OF CONTENTS

| | Page |
|------------------------------------|------|
| TABLE OF AUTHORITIES | i |
| STATEMENT OF THE CASE..... | 1 |
| ARGUMENT FOR DENYING THE WRIT..... | 2 |
| 29 USCA 185 | 7 |
| CONCLUSION..... | 7 |

TABLE OF AUTHORITIES

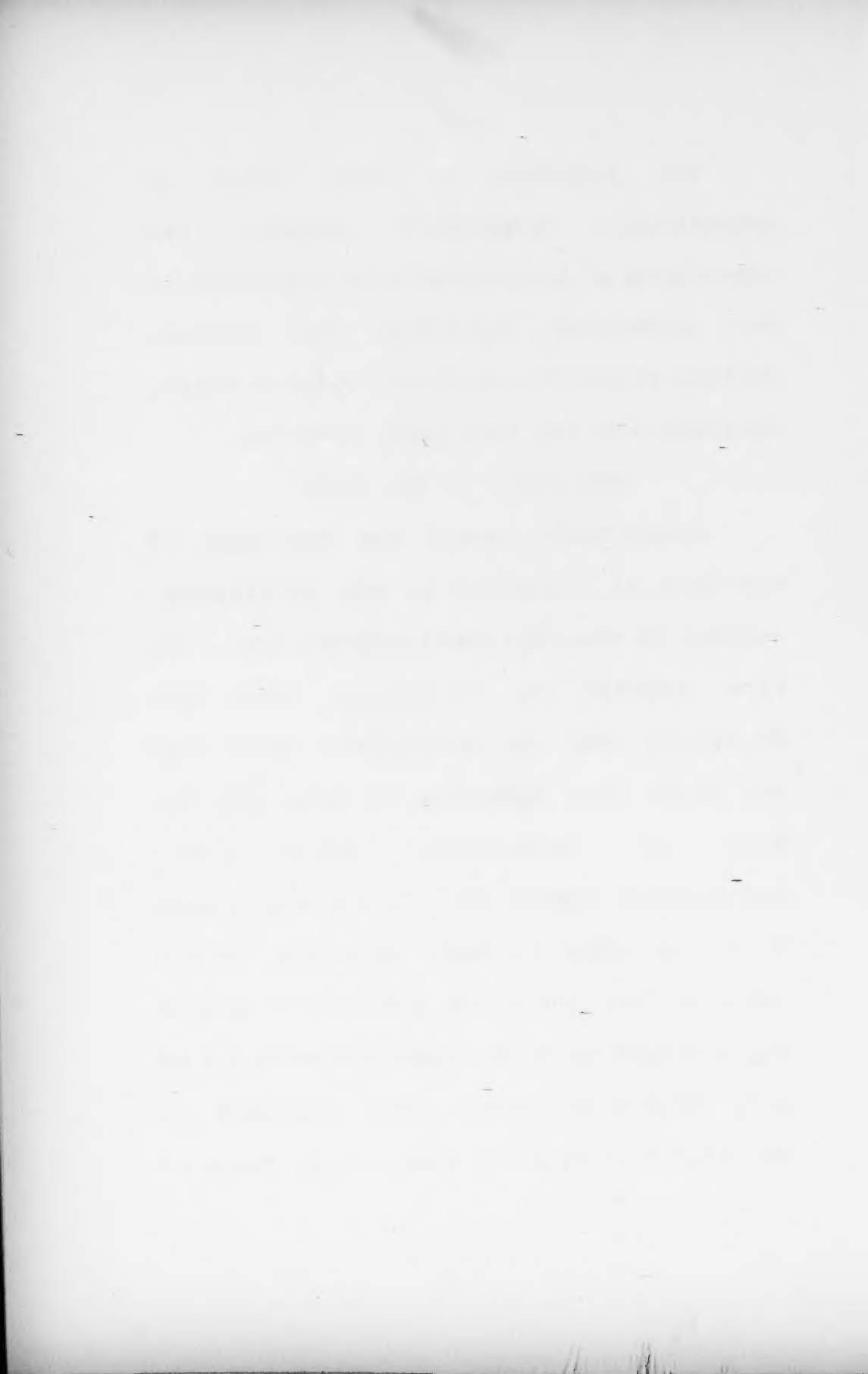
| | |
|-------------------|---|
| 29 USCA 185 | 7 |
|-------------------|---|



For purposes of this Brief in Opposition, respondent accepts the statements of petitioner with reference to the Questions Presented for Review, Parties to the Proceedings, Opinion Below, Jurisdiction and Pertinent Statutes.

STATEMENT OF THE CASE

Respondents accept the Statement of the Case as presented by the petitioner, subject to the following elaboration. The fine imposed on respondent Bray was \$8,416.00 and on Respondent Bort was \$8,416.00 (See Appendix to Petition for Writ of Certiorari, page A-8). Respondents submit that these fines were so unreasonable on their face that in the court action filed the petitioner prayed for judgment against these respondents of only \$4,208.00 each. (See Appendix to Petition for Writ of Certiorari, page A-



9). Respondent's submit that this was still an unconscionable penalty under the facts.

ARGUMENT

This court should not review this case. The Washington law of contracts as it applies in the unique area of a private contractual right to assess and collect penal fines, requires that the contracting parties must agree that state court enforcement is an accepted enforcement alternative before the state courts will allow a collection action to proceed. This is not an unreasonable requirement for penal fines where initially the protections of the judicial system are not available to the parties against whom fines are assessed. It is further consistent with the philosophy of the federal labor policy that state courts

not interfere with internal union affairs absent an express invitation or express legislation authorizing state court involvement. Access to state court is not restricted by Washington law, rather it is restricted by its omission from the union's contractual agreement with its members.

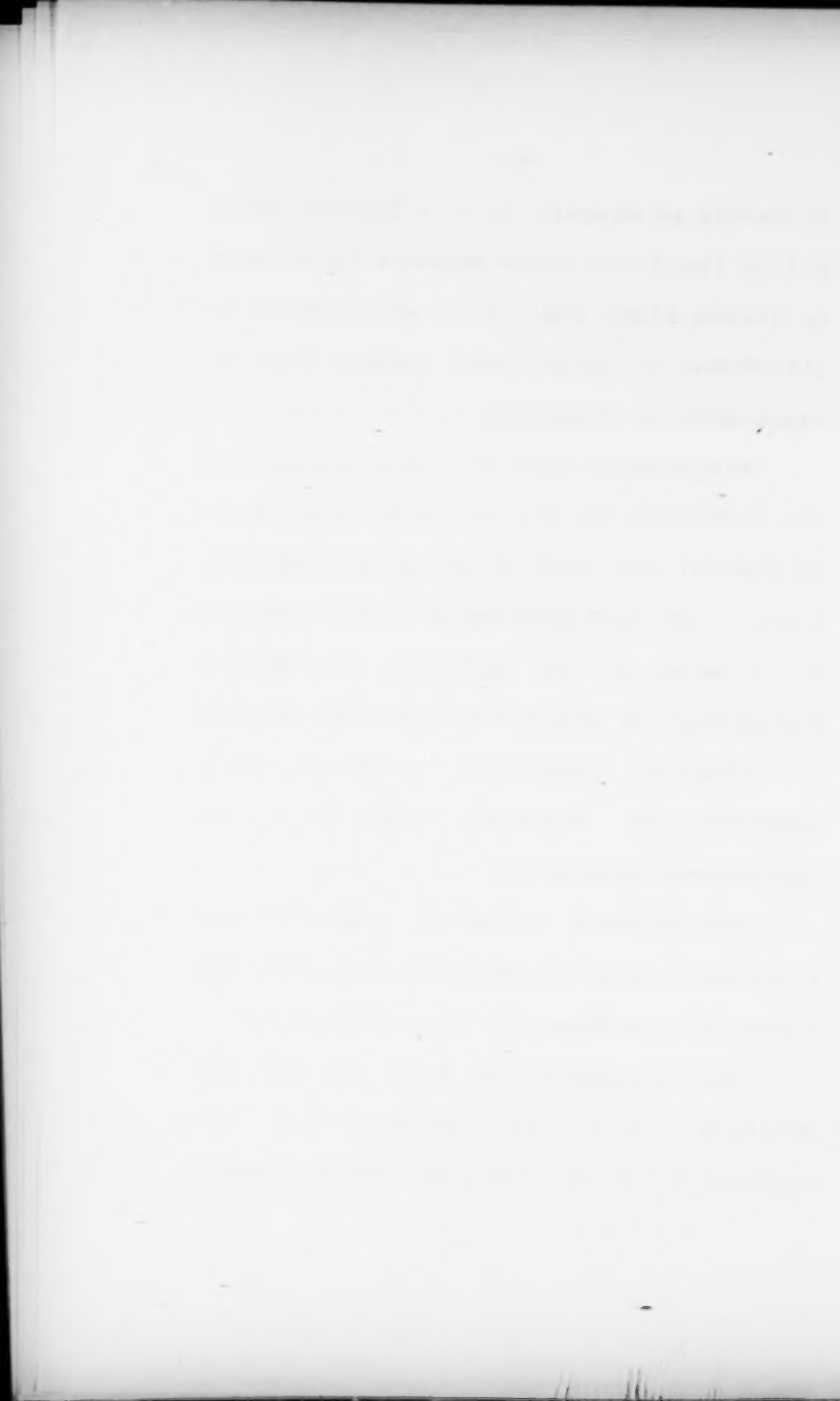
Federal labor policy does not require that union members submit the enforcement of penal fines to state courts. Therefore the Washington rule requiring consent by the contracting parties to pursue state court enforcement actions does not violate federal labor policy. The federal courts dicta regarding this matter, cited in the Petition for Writ of Certiorari, arises in the context of whether efforts to use state court process constitutes an unfair labor practice. The fact that it does not

is hardly an exposition of a federal labor policy requiring union members to consent to having fines subject to enforcement by attachment or garnishment rather than by suspension or expulsion.

Respondents take strong exception to the inference in the Petition that there is federal substantive law governing this issue. As the Washington State Supreme Court noted in its decision, the United States Supreme Court has held that this is a federally unentered enclave. (See Appendix to Petition for Writ of Certiorari, page a-23).

Respondents likewise reject the repeated inferences of petitioner that the fines in this case are "reasonable".

The statement at page 20 of the Petition, that the decision of the Washington State Supreme Court would



require a modification of the IBEW International Constitution is erroneous and misleading. In this case, the only evidence of the contract between the Union and the members which was before the court was encompassed by the national union constitution and the local union by laws. This does not preclude other contractual documentation. Washington law requires that the union member and the union must mutually agree that a penal fine can be enforced in a state court collection action. Any contracted agreement would suffice if it showed the mode of discipline to which the member agreed to submit when he joined the union. A local by-law or resolution would satisfy Washington's rule for consensual private ordering of penal fines and their state court enforcement, a fact that the

petitioner has known to be true in this state for over 20 years.

Petitioner argues that the unions should have reasonable freedom to formulate their own rules for effectively disciplining their members. Do the members have no say in those rules? What is it that the union officials fear? Why do they refuse to submit so simple a question to their rank and file members? Why do the union officials expend thousands of dues generated dollars to force this ruling upon their members through the courts, rather than simply put it to a vote of the membership? Petitioner urges the right of the union; respondent asks, what about the right of the union member?

29 USCA 185

This is not a case within the purview of 29 USCA 185 as urged by petitioner starting at page 22 of the Petition. The statute (See Appendix to Petition for Writ of Certiorari, page A-83) specifies that it applies to:

Suits for violation of contracts between an employer and a labor organization ... or between any such labor organizations....

This is a suit by a union against several individual members to enforce penal fines. It does not involve an employer nor does it involve two or more labor organizations, therefore it does not involve 29 USCA 185.

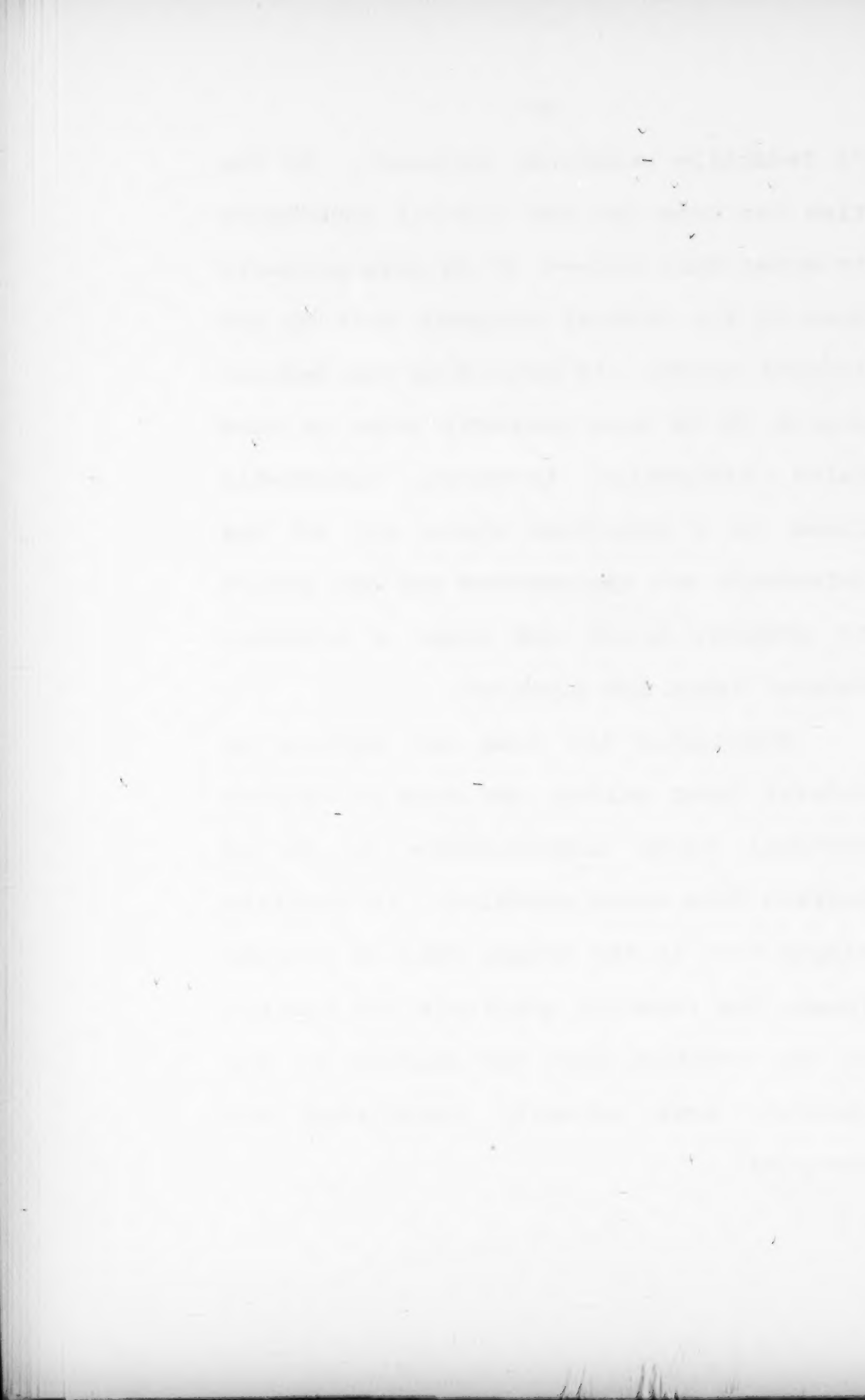
CONCLUSION

This court has recognized that the manner in which states deal with the enforcement of a labor union penal fine is



"a federally unentered enclave". If the time has come for the federal government to enter this enclave it is more properly done by the federal congress than by the federal courts. If entered by the federal courts it is more properly done in good faith litigation involving reasonable fines in a situation where all of the defendants are represented and can afford to properly brief and argue a national federal labor law question.

Washington law does not impinge on federal labor policy, nor does it require national labor organizations to do or refrain from doing anything. It requires simply that in the unique area of private fines, the remedies available are limited to the remedies that the parties to the contract have mutually negotiated and accepted.



Certiorari should be denied.

Respectfully Submitted:

Cockrill, Weaver and Bjur
Attorneys for Respondents
Bray and Bort

Patrick R. Cockrill

Timothy R. Weaver